

AMENDED IN SENATE MAY 19, 2010

AMENDED IN SENATE JUNE 22, 2009

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 919**

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**Introduced by Assembly Member Nava**

February 26, 2009

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~~An act to add Section 2948.2 to the Civil Code, and to amend Section 27288.1 of the Government Code, relating to mortgages. An act to add Chapter 7.5 (commencing with Section 750) to Division 1 of Title 1 of the Corporations Code, relating to corporations.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 919, as amended, Nava. ~~Mortgages: information and recordation. Corporations: political activities: shareholder objections.~~

*Existing law provides a shareholder dissenter's rights with respect to specified corporate transactions, including mergers and sales of assets, if a shareholder does not vote in favor of the transaction and notifies the corporation, as specified, that the shareholder dissents, and requires the corporation to pay the dissenting shareholder cash in the amount of the fair market value of the shareholder's dissenting shares, as specified, in lieu of the other consideration that a nondissenting shareholder is entitled to receive.*

*The Political Reform Act of 1974 provides for the regulation of political campaign financing, including the reporting and disclosure of campaign contributions and expenditures. Under the act, elected*

*officers, candidates for elective office, and campaign committees are required to file periodic campaign statements that disclose specified information for specified reporting periods, including the amount of contributions received and the identities of donors.*

*This bill would require a corporation, as defined, that makes a contribution or expenditure to, or in support of, or in opposition to, a candidate, ballot measure campaign, or a signature-gathering effort on behalf of a ballot measure, political party, or political action committee to report those contributions or expenditures to shareholders by specified means, including posting the report on the corporation's Internet Web site, if any, and to refund to an objecting shareholder a pro rata share of dollar value of those contributions or expenditures, based on the shareholder's share ownership. The bill would define, among other terms, "objecting shareholder" and "political activity" for these purposes.*

*This bill would provide for a civil cause of action, including recovery of reasonable attorney's fees, by a shareholder against a corporation for violations of the bill's provisions. The bill would require a corporation to maintain records that include copies of the reports on its political activities for 5 years, and to make copies of these reports available to the Secretary of State upon request. The bill would also state findings and declarations of the Legislature.*

~~Upon a breach of the obligation of a mortgage or transfer of an interest in property, in order to exercise a power of sale, existing law requires the trustee, mortgagee, or beneficiary to record in the office of the county recorder in the county where the mortgaged or trust property is situated, a notice of default. Existing law provides a form for a mortgage of real property. Existing law requires a county recorder, upon proper payment, to accept any instrument authorized by statute to be recorded, provided that it meets specified requirements. Existing law requires certain documents relating to real property that are to be recorded to contain specified information.~~

~~This bill would require a mortgage or deed of trust that is secured by residential real property, as defined, to have an attached Residential Mortgage Participant Rider form, as set forth, that identifies by name any appraiser, lender, loan originator, and real estate broker, as defined, who were involved in the origination of the mortgage or deed of trust and his or her professional license number, if any. The bill would prohibit the county recorder from accepting a mortgage or deed of trust for recordation if a Residential Mortgage Participant Rider form is not~~

included. By creating a duty for a county recorder to examine a mortgage or deed of trust to establish if a completed rider has been included, this bill would impose a state-mandated local program.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~yes~~-no.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature finds and declares all of the  
2     following:  
3     (a) Corporations make substantial political contributions and  
4     expenditures to support and oppose candidates, ballot measures,  
5     political parties, and political causes. However, decisions to use  
6     corporate funds for political contributions and expenditures are  
7     usually made by corporate boards and executives, rather than the  
8     shareholders who own the corporations.  
9     (b) Shareholders have a right to know how corporations are  
10    spending shareholder funds to make political contributions and  
11    expenditures to support or oppose candidates, ballot measures,  
12    political parties, and political causes.  
13    (c) Most shareholders have no means by which they may learn  
14    of, influence, or object to the political activities of the corporations  
15    in which they have invested. Moreover, most shareholders have  
16    no means by which they may demand reimbursement or demand  
17    that their invested funds not be used to make political contributions  
18    or expenditures to support candidates, ballot measures, political  
19    parties, or political causes to which the shareholders are opposed.  
20    (d) By limiting the extent to which corporate political  
21    contributions and expenditures may be regulated, the United States  
22    Supreme Court, through its decision in *Citizens United v. Federal*  
23    *Election Com'n* (2010) 130 S.Ct. 876, has increased the need for  
24    greater accountability of corporations to their shareholders with  
25    regard to political contributions and expenditures.

1 (e) *The Citizens United decision was handed down in January*  
2 *2010, but the debate over whether the invested funds of*  
3 *shareholders should be used for political activities without their*  
4 *consent is not a new one. In 1905, President Theodore Roosevelt*  
5 *said, “All contributions by corporations to any political committee*  
6 *or for any political purpose should be forbidden by law; directors*  
7 *should not be permitted to use stockholders’ money for such*  
8 *purposes.”*

9 (f) *It is the intent of the Legislature in enacting this act to protect*  
10 *shareholders from having portions of their investments used for*  
11 *political activities that the shareholders do not support.*

12 SEC. 2. Chapter 7.5 (commencing with Section 750) is added  
13 to Division 1 of Title 1 of the Corporations Code, to read:

14  
15 CHAPTER 7.5. POLITICAL OBJECTIONS OF SHAREHOLDERS  
16

17 750. As used in this chapter, the following terms have the  
18 following meanings:

19 (a) “Ballot measure” means a constitutional amendment or  
20 other proposition that is submitted to a popular vote at an election  
21 by action of a legislative body, or that is submitted or is intended  
22 to be submitted to a popular vote at an election by initiative,  
23 referendum, or recall procedure, whether or not it qualifies for  
24 the ballot.

25 (b) “Corporation” means any of the following:

26 (1) A publicly held corporation with shareholders.

27 (2) An entity in which a corporation with shareholders has an  
28 equity interest.

29 (3) The parent corporation of a subsidiary or affiliate of a  
30 corporation with shareholders.

31 (c) “Objecting shareholder” means a shareholder who informs  
32 the corporation that the shareholder does not wish the pro rata  
33 value of the shareholder’s shares to be used for political activities.

34 (d) “Political activity” means a contribution or expenditure  
35 made to, or in support of, or in opposition to, a candidate, ballot  
36 measure campaign, signature-gathering effort on behalf of a ballot  
37 measure, political party, or political action committee.

38 (e) “Public corporation” means a corporation that is required  
39 to file periodic reports pursuant to Section 13(a) or 15(d) of the

1 *Securities Exchange Act of 1934, as amended (15 U.S.C. Secs.*  
2 *78m(a), 78o(d)).*

3 (f) *“Shareholder” has the same meaning as set forth in Section*  
4 *185.*

5 751. *A corporation that has shareholders with legal residency*  
6 *in California and that engages in political activity shall do all of*  
7 *the following:*

8 (a) (1) *Within 30 days after the close of the corporation’s fiscal*  
9 *year, the corporation shall prepare a report entitled “Political*  
10 *Activity Report” describing all political activity by the corporation*  
11 *during that fiscal year and provide a written copy of the report to*  
12 *the corporation’s California shareholders. The report shall include*  
13 *all of the following:*

14 (A) *A description of the political activities, the intended results*  
15 *of those activities, and the anticipated benefits of those activities*  
16 *to the corporation’s shareholders.*

17 (B) *The name of the person, candidate, committee, or political*  
18 *party, or a description of the political cause, to which each*  
19 *contribution or expenditure was made.*

20 (C) *The aggregate amount of the contribution or contributions*  
21 *and expenditure or expenditures for each candidate, ballot measure*  
22 *campaign, signature-gathering effort on behalf of a ballot measure,*  
23 *political party, or political action committee.*

24 (D) *If a contribution or expenditure was made in support of or*  
25 *in opposition to a candidate, the office sought by the candidate*  
26 *and the political party affiliation of the candidate.*

27 (E) *If a contribution or expenditure was made for or against a*  
28 *ballot measure, a description of the ballot measure and a statement*  
29 *as to whether the contribution or expenditure was made in support*  
30 *of or in opposition to the ballot measure.*

31 (2) *A public corporation is deemed to have complied with this*  
32 *subdivision if it includes the report required by paragraph (1) in*  
33 *its annual report to shareholders under a separate caption entitled*  
34 *“Political Activity Report,” if the annual report is provided to*  
35 *shareholders within 90 days of the fiscal yearend.*

36 (3) *If the corporation maintains an Internet Web site, the*  
37 *corporation shall post the report required by this subdivision on*  
38 *its Internet Web site.*

39 (b) *This section shall not apply to a corporation’s use of*  
40 *segregated accounts, political action committees, or political*

1 committees, as long as the funds in those accounts or committees  
2 come from shareholders, board members, or employees of the  
3 corporation who, as individuals, choose to contribute to those  
4 accounts or committees.

5 752. (a) A corporation required to submit a report pursuant  
6 to Section 751 shall notify each shareholder, in writing, using the  
7 same mailing used for the Political Activity Report, that the  
8 shareholder has the right to object to the use of corporate funds  
9 equaling the pro rata value of the shareholder's shares for political  
10 activities for the fiscal year that directly follows the year to which  
11 the Political Activity Report pertains. The written notification shall  
12 inform the shareholder of the appropriate procedure for objecting.

13 (b) The corporation shall give each shareholder a minimum of  
14 60 days following receipt of the notification required by subdivision  
15 (a) to file a notice that he or she is objecting. A shareholder who  
16 fails to file a notice of objection within the timeframe established  
17 by the corporation shall be deemed to have consented to the use  
18 of corporate funds equaling the pro rata value of the shareholder's  
19 shares for political activities.

20 (c) At the end of the fiscal year in which a shareholder has  
21 objected pursuant to subdivision (b), the corporation shall  
22 calculate the objecting shareholder's pro rata share of the total  
23 dollar value of the political activities in the previous fiscal year,  
24 and shall return that amount to the shareholder in the form of a  
25 dividend. The objecting shareholder's pro rata share shall be  
26 determined by dividing the total dollar value of the political  
27 activities in the previous fiscal year by the number of outstanding  
28 shares, and multiplying the result by the number of shares held by  
29 the objecting shareholder.

30 (d) Only shares owned by an objecting shareholder at the time  
31 of the objection shall be used in the fiscal yearend calculation  
32 pursuant to subdivision (c).

33 (e) A corporation shall not be required to provide the notice of  
34 objection to a shareholder who does not own shares at the  
35 beginning of the fiscal year and subsequently purchases shares  
36 after that date.

37 753. (a) A corporation subject to Section 751 shall maintain  
38 records of its political activities, including the report required by  
39 subdivision (a), for a minimum of five years.

1     (b) Upon a request by the Secretary of State, a corporation shall  
2     file with the Secretary of State a copy of each report produced  
3     pursuant to subdivision (a) of Section 751.

4     754. No provision of Section 751 or 752 shall be construed to  
5     relieve a corporation of its obligations under existing law,  
6     including but not limited to, the following:

7         (a) Section 604, or a successor statute or regulation.

8         (b) Any state or federal statute or regulation that regulates the  
9     solicitation of proxies.

10        (c) With respect to a corporation with an outstanding class of  
11     securities registered pursuant to Section 12 of the Securities  
12     Exchange Act of 1934, as amended (15 U.S.C. Sec. 78l), the proxy  
13     rules promulgated under that act.

14     755. (a) A violation of Section 751 or 752 by a corporation  
15     shall create a civil cause of action for damages against the  
16     corporation that may be brought by any shareholder of the  
17     corporation.

18        (b) Reasonable attorney's fees and costs may be recovered by  
19     the shareholder for any action brought pursuant to this section.

20        (c) The remedies provided in this section are in addition to any  
21     other rights or remedies available under any other provision of  
22     law.

23     756. The provisions of this chapter are severable. If any  
24     provision of this chapter or its application is held invalid, that  
25     invalidity shall not affect other provisions or applications that can  
26     be given effect without the invalid provision or application.

27     ~~SECTION 1. Section 2948.2 is added to the Civil Code, to~~  
28     ~~read:~~

29     ~~2948.2. (a) A mortgage or deed of trust that is secured by~~  
30     ~~residential real property shall have attached a fully completed and~~  
31     ~~signed Residential Mortgage Participant Rider form, as set forth~~  
32     ~~in subdivision (d). A Residential Mortgage Participant Rider is a~~  
33     ~~mortgage rider that identifies by name any of the following parties~~  
34     ~~who participated in the origination of the mortgage or deed of trust~~  
35     ~~and his or her professional license number, if any:~~

36         ~~(1) Appraiser.~~

37         ~~(2) Lender.~~

38         ~~(3) Loan originator.~~

39         ~~(4) Real estate broker.~~

1     (b) If a transaction does not include any of the parties listed in  
2     subdivision (a), the Residential Mortgage Participant Rider shall  
3     indicate that the participant type is not applicable.  
4     (c) For purposes of this section:  
5     (1) “Appraiser” means a person who is, or should be, licensed  
6     under Part 3 (commencing with Section 11300) of Division 4 of  
7     the Business and Professions Code.  
8     (2) “Lender” means the secured creditor or creditors named in  
9     the debt obligation and document creating the lien.  
10    (3) “Loan originator” means a person who, for compensation  
11    or gain or in the expectation of compensation or gain, takes a  
12    residential mortgage application or offers or negotiates the terms  
13    or a residential mortgage loan. “Loan originator” does not include:  
14    (A) A person engaged solely as a loan processor or underwriter.  
15    (B) A person or entity that performs only real estate brokerage  
16    activities and is licensed or registered in accordance with California  
17    law, unless the person or entity is compensated by a lender, a  
18    mortgage broker, a loan originator, or by any agent of those parties.  
19    (C) A person or entity that is involved solely in an extension of  
20    credit relating to a timeshare plan as defined in Section 101 of  
21    Title 11 of the United States Code.  
22    (4) “Residential mortgage loan” means a credit transaction that  
23    is secured by residential real property that is improved by four or  
24    fewer residential units.  
25    (5) “Residential real property” means real property that is  
26    improved by four or fewer residential units.  
27    (d) The Residential Mortgage Participant Rider required  
28    pursuant to this section, shall be in substantially the following  
29    form:

30  
31                               Residential Mortgage Participant Rider  
32    (To be recorded with Mortgage or Deed of Trust pursuant to Section 2948.2  
33    of the Civil Code.)  
34

35    Residential real property address: \_\_\_\_\_  
36    \_\_\_\_\_  
37

38  
39

| Participant | Name | Professional License<br>Number |
|-------------|------|--------------------------------|
|             |      |                                |



|   |  |  |
|---|--|--|
| Appraiser(s)  |  |  |
| -   |  |  |
| <input type="checkbox"/> Not Applicable <sup>2k</sup> |  |  |
| Lender(s)   |  |  |
| -   |  |  |
| <input type="checkbox"/> Not Applicable <sup>2k</sup> |  |  |
| Loan originator(s)                                    |  |  |
| -   |  |  |
| <input type="checkbox"/> Not Applicable <sup>2k</sup> |  |  |
| Real estate broker(s)                                 |  |  |
| -   |  |  |
| <input type="checkbox"/> Not Applicable <sup>2k</sup> |  |  |

<sup>2k</sup>Note: In the event that a transaction does not include any of the participants listed in the table above, the box marked "Not Applicable" must be checked in order for the form to be complete.

Form Completed by - \_\_\_\_\_ Date: \_\_\_\_\_  
 (Signed)  
 - \_\_\_\_\_ -  
 (Printed) - \_\_\_\_\_

**SEC. 2.** ~~Section 27288.1 of the Government Code is amended to read:~~

~~27288.1. (a) All documents described in this section now or hereafter authorized by law to be recorded in the official records of a county shall contain the following information in addition to any information as may be required by law pertaining to the particular document:~~

~~(1) If the document effects or evidences a transfer or encumbrance of an interest in real property, the name or names in which the interest appears of record, except that a notice of assessment recorded pursuant to Section 3114 of the Streets and Highways Code, a notice of special tax lien recorded pursuant to Section 3114.5 of the Streets and Highways Code, and a notice of award of contract recorded pursuant to Section 5248 of the Streets and Highways Code, shall show the name or names of the assessed owners as they appear on the latest secured assessment roll.~~

1     ~~(2) If the document releases or terminates any interest, right or~~  
2     ~~encumbrance, it shall contain or have appended thereto all of the~~  
3     ~~names of those persons and entities owning the title or interest~~  
4     ~~being relieved by the document, or the names of the owners of that~~  
5     ~~title or interest as they appeared at the time and in the document~~  
6     ~~creating the interest, right or encumbrance.~~

7     ~~(3) In cases where the county tax collector is filing purchaser's~~  
8     ~~deeds with respect to a sale for defaulted taxes, those documents~~  
9     ~~shall be deemed to constitute compliance with this section.~~

10    ~~(b) No document subject to this section shall be recorded or~~  
11    ~~indexed in the official records of a county unless it contains the~~  
12    ~~information required by this section as well as any additional~~  
13    ~~information required by law pertaining to the particular document,~~  
14    ~~including, but not limited to, the Residential Mortgage Participant~~  
15    ~~Rider form required by Section 2948.2 of the Civil Code, but the~~  
16    ~~recorder may rely upon the information contained in, or appended~~  
17    ~~to, the document being offered for record. The failure of any~~  
18    ~~document to include all of the names required by this section shall~~  
19    ~~not affect the constructive notice which would otherwise be~~  
20    ~~afforded by the recording of the document. This section shall not~~  
21    ~~apply to a vacation or abandonment by a public agency of a public~~  
22    ~~highway or road.~~

23    ~~SEC. 3. If the Commission on State Mandates determines that~~  
24    ~~this act contains costs mandated by the state, reimbursement to~~  
25    ~~local agencies and school districts for those costs shall be made~~  
26    ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
27    ~~4 of Title 2 of the Government Code.~~